

# **EXHIBIT B**

## Re: LS # 8321 and LS # 5994

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**From:** Katchen Locke <klocke@seiu32bj.org>  
**To:** David Cohen <dcohen@seiu32bj.org>  
**Cc:** "Levers, Anna" <alevers@council.nyc.gov>; Mia McDonald <mia@fastfoodjustice.org>; Autumn Weintraub <aweintraub@seiu32bj.org>; "Yearwood, Stacey" <syarwood@council.nyc.gov>  
**Date:** Tue, 27 Nov 2018 11:22:53 -0500

Works for me.

Sent from my iPhone

On Nov 27, 2018, at 11:13 AM, David Cohen <[DCohen@seiu32bj.org](mailto:DCohen@seiu32bj.org)> wrote:

If it works for Katchen - I can make 3:30 work tomorrow.  
Thanks all!  
Best,  
David

On Nov 27, 2018, at 11:05 AM, Levers, Anna <[ALevers@council.nyc.gov](mailto:ALevers@council.nyc.gov)> wrote:

Hey Katchen!

Can you join me and Stacey for a call with the drafter about the Just Cause bills tomorrow (11/28) at 3:30? If not, feel free to suggest some other times (As you'll see in the below chain, I fought hard for you to be in this initial meeting to go over Malcom's questions and legal concerns w/r/t your edits to save us all some time, so we can definitely accommodate your schedule).

Thanks!  
Annie

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**From:** Butehorn, Malcom <[MButehorn@council.nyc.gov](mailto:MButehorn@council.nyc.gov)>  
**Sent:** Monday, November 26, 2018 6:26 PM  
**To:** Levers, Anna <[ALevers@council.nyc.gov](mailto:ALevers@council.nyc.gov)>  
**Subject:** RE: LS # 8321 and LS # 5994

Hey there. Spoke with the deputies. Ok to have Katchen at the meeting. If we need to find a different time let me know.

Malcom M. Butehorn, Esq.  
Counsel  
Committee on Civil Service and Labor  
[New York City Council](#)  
250 Broadway, 14<sup>th</sup> Floor  
New York, NY 10007

## RE: bill drafts: just cause, layoff seniority

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**From:** Katchen Locke <klocke@seiu32bj.org>  
**To:** "Levers, Annie" <alevers@council.nyc.gov>; David Cohen <dcohen@seiu32bj.org>  
**Cc:** Brad Lander <[REDACTED]> Mia McDonald <mmcdonald@seiu32bj.org>; Autumn Weintraub <aweintraub@seiu32bj.org>; "Yearwood, Stacey" <syarwood@council.nyc.gov>  
**Date:** Wed, 16 Jan 2019 11:10:06 -0500

Looks good. Thanks, everyone.

I also realized that DCA may want posting and record-keeping requirements (along the lines of what's already in Fair Work Week), which would be pretty easy to add later.

Katchen

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**From:** Levers, Annie [mailto:ALevers@council.nyc.gov]  
**Sent:** Tuesday, January 15, 2019 8:57 PM  
**To:** David Cohen  
**Cc:** Brad Lander; Mia McDonald; Autumn Weintraub; Yearwood, Stacey; Katchen Locke  
**Subject:** Re: bill drafts: just cause, layoff seniority

I can't believe I left off Katchen! Apologies =)

Sent from my iPhone

On Jan 15, 2019, at 6:26 PM, David Cohen <[DCohen@seiu32bj.org](mailto:DCohen@seiu32bj.org)> wrote:

Plus Katchen:

I forwarded the attachments.

Best,  
David

On Jan 15, 2019, at 4:32 PM, Levers, Annie <[ALevers@council.nyc.gov](mailto:ALevers@council.nyc.gov)> wrote:

Hello again!

Revised drafts attached here based on some technical notes/fix requests I got from Katchen on Friday. Katchen, the only one we left for later was adding misconduct to the first sentence of the definition of progressive discipline, since that comes later in the same paragraph.

Let me know if these look good to you.

Thanks!  
Annie

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**From:** Levers, Annie  
**Sent:** Wednesday, January 09, 2019 4:32 PM  
**To:** 'Brad Lander' <[REDACTED]> David Cohen <[DCohen@seiu32bj.org](mailto:DCohen@seiu32bj.org)>; Mia

McDonald <[MMcDonald@seiu32bj.org](mailto:MMcDonald@seiu32bj.org)>; Autumn Weintraub <[AWeintraub@seiu32bj.org](mailto:AWeintraub@seiu32bj.org)>  
**Cc:** Yearwood, Stacey <[SYearwood@council.nyc.gov](mailto:SYearwood@council.nyc.gov)>  
**Subject:** FW: bill drafts: just cause, layoff seniority

Hello all!

New drafts attached here.

On the question of the section numbers: they are the same because neither bill has been introduced – re-ordering will apparently get sorted out once we get to aging. I've included the full list of change requests below for easy reference – I've reviewed both bills and it looks like Malcom has addressed everything on the list.

(Quick note: the attorneys fees on private cause of action for both bills are tucked into LS 5226 -- the private cause of action section of the code would apply to both bills, once they pass and get renumbered.)

Thanks so much,  
Annie

**Technical question:**

- Is there a reason why the section subchapter numbers are the same for both bills? (i.e. the Definitions are both listed as § 20-1271 Definitions.) Assuming these pass at the same time, would that become a problem?

**Layoffs (LS 8321)**

**1272-C:** -- gives the right to recall within a year. Our preference is to remove this completely (lines 5-8). We think this would also be very difficult to enforce (and BJ says most FF workers quickly move on to find other jobs, they aren't waiting around to get hired back). We also don't want to conflict with the "access to hours" provision of the fair work week law, in which employers must offer new hours to workers already working in the store.

**Layoffs (LS 8321) & Just Cause (LS 5662):**

- In both bills, we'd like to **rename the "Specific Penalties" sections as "Applicability of Schedule Change Premiums"** to make clear that the FWW rules apply. (Premium payments aren't penalties, per se).
- In the **"exemptions"** section for both bills, with respect to Collective Bargaining agreements, we'd like to make clear that the rights are only waived if the CBA "provides comparable or superior benefits for fast food employees" rather than just "addresses." (in subparagraph #1, which is a separate issue from subparagraph #2)  
**Attorney's Fees and costs** should be mandatory for both arbitration and private right of action.

**Just Cause (LS 5662):**

- Definition of Just Cause (§ 20-1271):
  - We'd like to add **"demonstrably and materially..."** harmful to the fast food employer's legitimate business" to line 10.
  - We'd like to **remove** "just cause does not include a fast food employee's legal recreational activities outside work hours, off the employer's premises and without use of the employer's premises and without use of the



employer's equipment or other property, or other protected activities." We believe this issue is well covered in arbitration case law and is best left out completely.

- Definition of Progressive Discipline (§ 20-1271):
  - We'd like to make more clear that progressive discipline can include immediate termination for very bad offenses (i.e. punching someone in the face). Nothing herein shall preclude a fast food employer from terminating a fast food employee immediately for a sufficiently egregious failure or misconduct constituting just cause.
- Factors for consideration in determining whether a fast food employee has been terminated for just cause. The four factors are good – but as written, they only apply to Private Cause of Action. The same **four standards should apply to arbitration, private right of action, and DCA enforcement**
- **20-1272:** the probationary period language is confusing, as it appears in this section. We'd like to remove "and the fast food employee has completed such probationary period; not to exceed 30 days from the date of hire." from that section, and instead clarify it in the exemptions section (20-1276) that a probationary period can last no longer than 30 days.
- **20-1273 (d):** we'd like to add "non-hearsay evidence in any proceeding brought pursuant to this Chapter." (line 2, page 3). A lot of FF workers are fired based on customer complaints, with no way to find out the details of the complaint rebut it.
- **20-1274 (d).** In a case where an insufficient number of panelists have appointed individuals to fill the committee, we'd like to require DCA to consult with any panelists that have been appointed. (page 3, line 2)

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**From:** Butehorn, Malcom <[MButehorn@council.nyc.gov](mailto:MButehorn@council.nyc.gov)>  
**Sent:** Wednesday, January 09, 2019 3:09 PM  
**To:** Levers, Annie <[ALevers@council.nyc.gov](mailto:ALevers@council.nyc.gov)>; Yearwood, Stacey <[SYearwood@council.nyc.gov](mailto:SYearwood@council.nyc.gov)>  
**Subject:** bill drafts: just cause, layoff seniority

Back to you both

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## RE: bill drafts: just cause, layoff seniority

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**From:** "Levers, Annie" <alevers@council.nyc.gov>  
**To:** Katchen Locke <klocke@seiu32bj.org>  
**Cc:** "Yearwood, Stacey" <syewood@council.nyc.gov>  
**Date:** Wed, 16 Jan 2019 15:36:00 -0500

So right now the bills don't speak to each other so he just added that whole section to the layoffs bill. Let me know if that works.

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**From:** Katchen Locke <klocke@seiu32bj.org>  
**Sent:** Wednesday, January 16, 2019 3:00 PM  
**To:** Levers, Annie <ALevers@council.nyc.gov>  
**Cc:** Yearwood, Stacey <SYewood@council.nyc.gov>  
**Subject:** RE: bill drafts: just cause, layoff seniority

Shoot, and I didn't catch this last time—whether "lay off" needs to be added to the end of subsection (i) on p. 8. Sorry about that.

Other than that, looks good.

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**From:** Levers, Annie [<mailto:ALevers@council.nyc.gov>]  
**Sent:** Wednesday, January 16, 2019 2:43 PM  
**To:** Katchen Locke  
**Cc:** Yearwood, Stacey  
**Subject:** FW: bill drafts: just cause, layoff seniority

How do these look, Katchen?

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**From:** Butehorn, Malcom <[MButehorn@council.nyc.gov](mailto:MButehorn@council.nyc.gov)>  
**Sent:** Wednesday, January 16, 2019 2:12 PM  
**To:** Levers, Annie <[ALevers@council.nyc.gov](mailto:ALevers@council.nyc.gov)>  
**Subject:** RE: bill drafts: just cause, layoff seniority

Alrighty. Here you go.

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